

FST-CV17-6032951

OWENS, CANDACE

v.

THREE HARBOR POINT  
SQUARE, LLC

SUPERIOR COURT  
STAMFORD-NORWALK  
JUDICIAL DISTRICT

2020 FEB 5 A 10:26

J.D. OF STAMFORD/NORWALK

AT STAMFORD

February 3, 2020

ARBITRATION AWARD

Counsel, the plaintiff, and a representative for the defendant appeared before the undersigned on December 13, 2019 for court-annexed arbitration. The two witnesses testified and were cross examined by opposing counsel. Post-hearing memoranda and materials were submitted to the undersigned by counsel on December 20, 2019. Based on the evidence submitted, the undersigned decides as follows.

The issue to be tried was the defendant's counterclaim against the plaintiff for unpaid rent / use and occupancy and related costs, and the plaintiff's denial that such monies are due.

The parties are at issue over the landlord's alleged promise that the plaintiff need not pay her rent. The undersigned could not find sufficient corroborative evidence that the landlord told the plaintiff that she was relieved of paying her rent. However, I do find that that landlord represented, after service of the notice to quit, that their notice to quit was being withdrawn (not "put on hold"). In Exhibit 4, the Landlord's agent states "*Our intention is not to evict you . . .*" and "*I've contacted our attorney and instructed them to withdraw this filing until we've had an opportunity to discuss. . .*" The Arbitrator therefore declines to attorneys fees in connection with the eviction action which was not withdrawn.

C.G.S. §47a-4a declares that rent shall not be due for any time in which the landlord has failed to comply with subsection (a) of section 47a-7. Section 47a-7(a) subsection (2) states that the landlord has the duty to do whatever is necessary to put and keep the premises in a fit and

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Catherine Cerny  
Civil Caseflow Coordinator

142.00

habitable condition. The Arbitrator accepts the plaintiff's testimony that the apartment became unfit and uninhabitable when the water leak occurred and she suffered physical ailments, and that the apartment remained in that condition through September 2016 when the plaintiff sent her October 9 email stating: *"I am not withholding my October rent, as the issue in my apartment has been cleaned and corrected."*

The defendant claims that she vacated the premises in mid-December 2016 and requests that any damages award be capped there. However, the rental agreement did not expire until February 2017. Defendants have extended their claim until January 2017. C.G.S. §47a-11c obligates the landlord to mitigate its damages in the event a tenant breaches their lease – in this case the only available mitigation would be to re-let the premises. It is not reasonable to expect the landlord to be able to clean, market, and re-let the premises in less than 30 days. Therefore the Arbitrator accepts the claim of the defendant that damages should run through January 12, 2017 – approximately 30 days after the plaintiff relinquished possession of the apartment -- as a reasonable compromise of this issue.

The plaintiff's monthly lease obligations from October 1 through January 12 amount to \$12,165.83 according to exhibit 2 (minus the legal fees listed between 9/27/16 and 1/12/17 since legal fees are dealt with elsewhere in this Award).

Landlord also claims damages for various "repairs" and the like required after plaintiff vacated, and charges against those expenses the plaintiff's security deposit of \$750.00. However, that list includes a prorated carpet replacement charge of \$400.00 without any evidence of damage to that carpet apart from normal wear and tear. Wear and tear is not the tenant's responsibility. Landlord's claim concerning the parking garage transponders is also

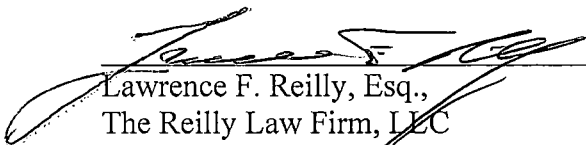
rejected. Landlord's remaining punchlist amounts to \$621.24. Plaintiff is entitled to a credit of \$128.76 on her security deposit.

As noted above, legal fees from the summary process action are rejected since the notice to quit was supposed to be withdrawn. Legal fees for this action in the amount of \$3,200.00 are deemed reasonable (Although the promised affidavit was not provided, under Connecticut law, the Court is qualified to assess what legal fees are "reasonable", and the undersigned is aware that this litigation has been ongoing since 2017 and included a motion for summary judgment).

Therefore, this Award is rendered in favor of the defendant against the plaintiff on the defendant's counterclaim as follows:

|                                  |                                 |
|----------------------------------|---------------------------------|
| \$12,165.83                      | rent / use and occupancy        |
| (128.76)                         | credit for net security deposit |
| <u>3,200.00</u>                  | <u>attorneys fees</u>           |
| <b>Final Award: \$15,237.07.</b> |                                 |

THE ARBITRATOR,

  
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